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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Estate of EDWARD J. ENG, Deceased.

B255829, B258567
(Los Angeles County
Super. Ct. No. BP113977)

AMELIA ENG,

Petitioner and Appellant,

v.

MARGARET ENG et al.,

Objectors and Respondents.

APPEALS from a judgment and an order of the Superior Court of Los Angeles County, Daniel S. Murphy, Judge. Affirmed.

Benedon & Serlin, Gerald M. Serlin, Lillie Hsu and Douglas G. Benedon for Petitioner and Appellant.

Nelson Comis Kettle & Kinney and Kerry M. Kinney for Objectors and Respondents Margaret Eng, Susan Eng Madjar, Michael Eng, Jeffrey Eng, Taylor Unger, Jonathan Lum, Jr., and Zhong Pei Wu.

Irsfeld, Irsfeld & Younger and Kathryn E. Van Houten for Objector and Respondent Norman H. Green.

Amelia Eng appeals the trial court's denial of her petition for redress and the court's order awarding attorney fees to the respondents in this protracted dispute over her parents' wills. We affirm.

BACKGROUND

Amelia¹ is one of five children of Edward and Frances Eng. The other children are Michael Eng, Susan Madjar, Margaret Eng, and Cynthia Comiskey. In 2003, Edward and Frances executed joint wills and codicils in which each left everything (including real estate in California, Oregon, and Canada) in a life estate to the survivor, with the survivor leaving everything to the five children.

Without Edward's knowledge, in December 2003 Frances executed a new will prepared by attorney William E. Eick, leaving her share of the estate to the five children and nothing to Edward, and naming Michael, Amelia, and Susan as co-executors. Frances left Michael 40 percent of her total estate, including her share of the family residence and stock in a corporation that owned a property (land, an apartment complex, and horse stalls) called the Griffith Park Dude Ranch (GPDR), and additional funds if required to reach 40 percent. The property was to be valued as stated on the federal estate tax valuation. Frances left the rest and residue of her estate to her four daughters in equal shares.

Frances died on March 14, 2004. On March 26, 2004, Amelia, Susan, and Michael met with Edward, and Edward handwrote and signed a document (the March 26, 2004 document) stating, "To Susan Madjar, Amelia Eng and Michael Eng. [¶] I agree to probate the estate of my wife Frances C. Eng and waive all attorney fees thereon. [¶] Because I love my children, the Will and Codicil dated May 31, [20]03 and Dec. 6, [20]03 I am not revoking and the distribution to my children remain as written." Two witnesses signed the document, but none of the children signed. Edward became the

¹ For purposes of clarity, we use first names for the members of the Eng family; no disrespect is intended.

attorney for Frances's estate. (Amelia also was a lawyer, although in 2004 she was on inactive status.)

Disputes arose between the children as to whether Frances held her shares in the properties with Edward in joint tenancy or as tenants in common, and over the valuation of the properties. The tax return for Frances's estate dated December 8, 2004 listed a 65 percent share in GPDR as held in joint tenancy with Edward and valued at \$650,000, which Amelia disputed, and Amelia did not sign the return. Based on that value for GPDR, Michael claimed that he was due more money from Frances's estate to reach the 40 percent bequeathed to him in Frances's will.

Amelia retained Gerald A. Tomsic in August 2004 to represent her and her sisters "for the purpose of obtaining a contract with [Edward] for him to leave his estate in the manner similar to that of his current will." In a declaration signed December 13, 2004, Amelia described the March 26, 2004 meeting between the executors and Edward, and characterized the March 26, 2004 document as an "agreement to refrain from revoking his Will leaving his Estate to 'all his children.'" Amelia also stated, "So that said 'handwritten' Memorandum signed by [Edward] would be legally binding, the four daughter Beneficiaries hired . . . Tomsic to draft a formal typewritten Agreement." Tomsic drafted an agreement, but Edward refused to sign it.

On November 2, 2004, Amelia and Susan as co-executors filed a petition to remove Edward as the probate attorney for Frances's estate, citing conflicts of interest and breaches of fiduciary duty, including that Edward improperly claimed that the interest in the capital stock of GPDR was now all his. (Michael refused to join, and Susan later withdrew.) On December 28, 2004, the court continued a hearing on the petition and referred the parties to mediation. With attorney Tomsic present at the mediation, Edward signed a handwritten document (the December 28, 2004 document) addressed to the four daughters and stating, "To settle a dispute whether certain property is joint tenant or community property of Mom's estate, I agree to the following [¶] When the various Oregon properties, condo in Vancouver, BC and Colorado property is sold, I agree to distribute to my four daughters one half of the net proceed, share and

share alike to be divided equally.” The December 28, 2004 document says nothing about whether Edward will revoke his 2003 will. Edward subsequently distributed half the proceeds of those properties sold during his lifetime to the four daughters.

Edward prepared an income-based “appraisal” valuing GPDR at \$9,500,000, which Amelia received from Susan at the end of July 2005.² Unbeknownst to Amelia, on June 10, 2006, Edward signed a new will favoring Michael and changing other bequests, leaving much less to Amelia.

To settle a dispute regarding Michael’s share of Frances’s estate, on January 1, 2007, Edward and Michael signed a contract to make a will in which Edward promised to leave Michael his interest in the family home and Edward’s shares in GPDR, as well as other property (consistent with the distribution in Edward’s 2006 will). The documents were prepared in consultation with Eick, and Amelia subsequently stated she, not Eick, had drafted the documents that Edward and Michael signed, including the petition for the final distribution of Frances’s estate, which referenced the contract to make a will (attached as an exhibit). Amelia, Susan, Michael, and Edward signed the petition for final distribution of Frances’s estate providing that Frances’s interest in GPDR had been transferred to Michael outside of probate, and all four sisters, Michael, and Edward signed a waiver of accounting agreeing to the distribution.

On April 27, 2007, the trial court approved and adopted the petition as the judgment of the court regarding Frances’s will, including Edward’s agreement to change his 2003 will. Edward was awarded \$51,427.84 for handling Frances’s estate as provided for in the petition. The estate closed in September 2007.

Edward died on October 8, 2008. In December 2008, Edward’s executors, Susan and Margaret, petitioned to have his 2006 will admitted to probate.

On June 23, 2009, Amelia filed a creditor’s claim against Edward’s estate. Amelia argued that the March 26, 2004 document was a binding agreement not to change

² At trial, a professional appraiser testified that GPDR had a value of \$6,850,000 in March 2004.

Edward's 2003 will, the December 28, 2004 document reiterated the agreement, and Edward breached these earlier agreements when he executed his 2006 will and took other actions. She requested enforcement of the 2003 will and alleged claims for breach of fiduciary duty, fraud, and constructive fraud. In September 2009, Susan and Margaret, as the personal representatives of Edward's estate, rejected the bulk of Amelia's claim, allowing only the payment of Amelia's interest in the income on property and her share in sums (neither of which is in issue on this appeal).

Amelia timely filed a petition for redress on September 21, 2009 under Probate Code³ sections 21700, which governs contracts not to revoke a will, and section 850, which in subdivision (2) allows an interested person to file a petition for an order when a decedent while living was bound by a written contract. The petition named as respondent Susan and Margaret as co-executors of Edward's estate and others, including Cynthia and Michael. Her 64-page second amended petition, filed March 16, 2012, added as a respondent Norman H. Green as administrator of Edward's estate. The second amended petition repeated the allegations in Amelia's creditor's claim that Edward breached the March 26, 2004 and December 28, 2004 documents when he executed his 2006 will, changing the disposition of his estate set out in the 2003 will to Amelia's detriment. Amelia also alleged breach of fiduciary duty, fraud and constructive fraud, civil conspiracy, negligent misrepresentation, constructive trust, accounting, interference with prospective inheritance, and contractual and equitable indemnity. She attached her creditor's claim and an amendment as exhibits.

The trial court heard testimony over 16 days in July, September, and October 2013. In a 33-page statement of decision filed November 12, 2013, the court found that Amelia had not established a breach of contract by Edward, because there was no mutual assent to the March 26, 2004 document (only Edward signed and the actions of the parties showed that the document was not a contract), and the language of the March 26,

³ All further statutory references are to the Probate Code unless otherwise indicated.

2004 document did not establish a contract that Edward would not revoke his 2003 will. The court also rejected all Amelia's other claims.

The court awarded the respondents and Administrator Green a total of \$540,418 in attorney fees in a 20-page statement of decision filed July 9, 2014, in which the court found that Amelia's petition for redress was unreasonable, frivolous, and brought in bad faith.

Amelia filed appeals from the judgment and from the award of attorney fees, and we consolidated the appeals for the purpose of argument and decision.

DISCUSSION

I. The March 26, 2004 document was not a contract never to revoke Edward's 2003 will.

Amelia argues that the trial court erred in finding that the March 26, 2004 document was not a contract in which Edward agreed never to change his 2003 will. The trial court found there was no mutual assent to the March 26, 2004 document, and the language of the document did not support a conclusion that Edward entered into an agreement not to revoke his 2003 will. We conclude that substantial evidence supports the trial court's finding that there was no mutual assent to the March 26, 2004 document, and in any event the plain language of the document does not support the conclusion that Edward agreed never to change his 2003 will.

““““[Whether] a certain or undisputed state of facts establishes a contract is one of law for the court On the other hand, where the existence . . . of a contract or the terms thereof is the point in issue, and the evidence is conflicting or admits of more than one inference, it is for the . . . trier of the facts to determine whether the contract did in fact exist . . . [.]’ [Citations.]”” [Citations.] ‘Mutual assent or consent is necessary to the formation of a contract’ and ‘[m]utual assent is a question of fact.’” (*Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 771–772 (*Vita Planning*).) “Here, the evidence regarding contract formation is conflicting because [the defendants] claim[] there was no mutual assent” (*Id.* at p. 772.)

The parties disputed at trial the factual question whether Susan, Amelia, and Michael (as the executors of Frances's estate) and Edward mutually agreed that in exchange for the executors' agreement allowing Edward to probate the estate (waiving all attorney fees), Edward promised never to revoke his 2003 will. We must uphold the trial court's finding that no contract existed if supported by substantial evidence in the record. (*Vita Planning, supra*, 240 Cal.App.4th at p. 772.) Substantial evidence is credible evidence of ponderable legal significance, and "[t]he ultimate determination is whether a reasonable trier of fact could have found for the respondent based on the whole record." (*Ibid.*)

"Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror." "The determination of whether a particular communication constitutes an operative offer . . . depends upon all the surrounding circumstances. [Citation.] The objective manifestation of the party's assent ordinarily controls, and the pertinent inquiry is whether the individual to whom the communication was made had reason to believe that it was intended as an offer." (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 270–271.) The offeree may accept either in words or by his or her actions or conduct. (*Vita Planning, supra*, 240 Cal.App.4th at p. 773.) "The absence of signatures does not render the [writing] unenforceable" unless, as is not the case here, there is a clear provision that the writing must be signed to become an operative contract, and other evidence that both parties contemplated that acceptance would be signified by signing. (*Ibid.*)

"The words of a contract are to be understood in their ordinary and popular sense" (Civ. Code, § 1644.) The plain language of the March 26, 2004 document demonstrates that it is not an offer by Edward never to revoke his 2003 will. Instead, Edward stated, "I *am not revoking* [the 2003 will] and the distribution to my children *remain* as written" (italics added), using the present tense. There is no promise not to change his will or the distribution in the future. The objective manifestation of Edward's assent does not support Amelia's argument that he agreed never to change his will. The

March 26, 2004 document states only that Edward is not presently revoking his will or changing the distribution.

There is also evidence that Amelia believed the document was not a contract. Consistent with the plain language in the document, Amelia did not “conduct[] [her]sel[f] as though they had an agreement” that Edward would never revoke his will in the future. (*Vita Planning, supra*, 240 Cal.App.4th at p. 773.) Amelia subsequently hired Tomsic to draft just such an agreement to make “legally binding” a promise not to change the will, evidence that she did not consider the March 26, 2004 document to be legally binding or enforceable. Further, when in late 2004 Amelia filed a petition to remove Edward as the probate attorney for Frances’s estate, she acted inconsistently with any agreement that Edward would serve as the estate’s attorney. Finally, Edward did not waive attorney fees, receiving \$51,427.84 for the probate of Frances’s estate.

At trial, the other executors testified that they did not think the document was a binding contract. Michael testified that he did not see the document until Susan sent it to him after his father’s death and the reading of the will, he “did not believe it was any kind of a contract whatsoever,” and his father never would have made a contract not to revoke his will. Susan testified at trial that when Edward signed the March 26, 2004 document, she did not know whether it meant he would not change his will in the future (although in her deposition she had testified to the contrary). Susan’s reason for hiring Edward to probate Frances’s estate was not based on a promise not to revoke his will, but “because he wasn’t going to charge us, and he was qualified to do the work.” Susan also testified that shortly after Edward signed the document, Amelia told her “that paper wasn’t any good” and was not enforceable. Amelia then visited Tomsic to prepare a binding agreement for Edward to sign, and Edward again refused. Susan believed he always had the ability to change his estate.

In addition, Eick stated he never saw the March 26, 2004 document before the day of his testimony, Amelia did not mention it to him, and he did not learn of its existence before he received his deposition subpoena. Margaret testified that she received the March 26, 2004 document after Edward’s death, and Edward had told her Amelia

pressured him to sign the December 28, 2004 document because the earlier document was not legal. Tomsic stated Amelia “was concerned about the validity of the enforceability” of any promise not to make a new will.

Amelia testified, as she argues on appeal, that she believed the March 26, 2004 document was a binding agreement that Edward would not revoke his will. But the trial court did not believe Amelia’s testimony and concluded, “No credible evidence was presented that Edward, either orally or in writing, agreed not to revoke his 2003 will and codicil.” “[W]e defer to the trial court on issues of witness credibility.”

(*Conservatorship of Rand* (1996) 49 Cal.App.4th 835, 842.)

Substantial evidence supports the trial court’s conclusion that the March 26, 2004 document was not a binding contract in which Edward agreed never to change his 2003 will. As we conclude the document was not an enforceable agreement, we need not address whether res judicata and collateral estoppel barred Amelia’s contract claim regarding the March 26, 2004 document.

II. Amelia’s breach of fiduciary duty claims are barred by the statute of limitations.

Amelia’s second amended petition included a claim that Edward, as her attorney for the probate of Frances’s will, breached his fiduciary duties to Amelia by his actions and by failing to disclose conflicts of interest. The trial court ruled that Amelia failed to bring her cause of action within the one-year statute of limitations applicable to breach of fiduciary duty by an attorney. As a lawyer herself, Amelia would have been aware of Edward’s duties and would immediately have been aware of any breach. Amelia’s petition to remove Edward as the attorney for Frances’s estate, filed on November 2, 2004, asserted numerous breaches of fiduciary duty, and she therefore had known of the alleged breaches since at least November 2004. Further, Edward stopped representing Frances’s estate and Amelia as executor on August 19, 2007 at the time of the final discharge, and she failed to file an action against him by August 19, 2008, before Edward’s death in October 2008.

The statute of limitations for a claim of breach of fiduciary duty by an attorney is identical to that for a claim for attorney malpractice, and an action “must be commenced within one year after the client discovers, or with reasonable diligence should have discovered, the facts constituting the act or omission” (*Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1364; Code Civ. Proc., § 340.6.) “The time a cause of action accrues is a question of fact. [Citation.] The trial court’s finding on the accrual of a cause of action for statute of limitations is upheld on appeal if supported by substantial evidence.” (*Institoris v. City of Los Angeles* (1989) 210 Cal.App.3d 10, 17.)

The petition to remove Edward as the attorney for Frances’s estate, which Amelia filed as an executor of the estate, is substantial evidence that Amelia was aware that she had been injured by Edward’s breaches of his fiduciary duty by November 2, 2004, when the petition was filed. The petition and its supplement cite numerous actions by Edward demonstrating “conflicts of interest, the failure to provide information, lack of cooperation, [and] failure to turn over any funds from the properties which are currently producing income.” Further, when Edward ceased to be the attorney for Frances’s estate at the time of final discharge in August 2007, any tolling based on continuous representation ceased. Amelia had a year (until August 19, 2008) to file a claim for breach of fiduciary duty. She failed to do so until September 2009. Substantial evidence supports the trial court’s conclusion that her claim for breach of fiduciary duty by Edward is barred.

On appeal, Amelia argues (as she did at trial) that her claim for breach of fiduciary duty did not accrue until after Edward died in October 2008, when she testified she learned of Edward’s 2006 will. Amelia claims that Edward had a fiduciary duty to disclose the new will because it reduced her inheritance and breached the March 26, 2004 agreement. We reject this argument. The trial court found that Amelia’s testimony was not credible, and as discussed above, substantial evidence supports the trial court’s finding that there was no agreement on March 26, 2004. More importantly, Edward’s fiduciary duty as an attorney was to Amelia as an executor for Frances’s estate, not as an individual. His actions in changing his will to her detriment were not acts or omissions

he performed as an attorney for Frances's estate and thus do not affect the accrual of her cause of action for breach of the fiduciary duty owed by an attorney.

III. Substantial evidence supports the conclusion that Amelia failed to prove extrinsic fraud.

The trial court stated that Amelia appeared to want to set aside the final judgment in Frances's estate, which would require that she show extrinsic fraud. Amelia argues on appeal that the trial court erred in concluding that she did not establish extrinsic fraud.

Extrinsic fraud occurs when the losing party has been prevented from fully putting on his case by fraud or deception practiced by his opponent, or "where fiduciaries have concealed information they have a duty to disclose. [Citations.] . . . [E]ven if a potential objector is not kept away from the courthouse, the objector cannot be expected to object to matters not known because of concealment of information by a fiduciary." (*Lazzarone v. Bank of America* (1986) 181 Cal.App.3d 581, 596–597.) The trial court concluded that Amelia did not establish that she did not have enough information to pursue her claims during the pendency of Frances's estate. Substantial evidence supports that conclusion.

Amelia argues that Edward (as the executors' attorney) concealed the following facts that he had a duty to disclose: that GPDR was worth more than the amount Edward put on the estate tax return, and that GPDR was improperly designated as held in joint tenancy. While the failure to disclose the existence of an asset may constitute extrinsic fraud, "[v]aluation, like designation of property as being either community or separate, is an issue on which reasonable views often differ, and *in the absence of concealment of assets*—or facts materially affecting their value," no extrinsic fraud occurs. (*In re Marriage of Modnick* (1983) 33 Cal.3d 897, 907–908.) Amelia was fully aware of the estate's interest in GPDR, and "a misrepresentation of that property's value[] [Citation.] . . . may not amount to extrinsic fraud." (*Id.* at p. 907.)

Further, there was evidence at trial that Amelia did not believe that GPDR was worth the amount on the tax return, or that the property was held in joint tenancy. At the end of July 2005, Amelia received Edward's valuation of GPDR at \$9,500,000. Amelia as co-executor of Frances's estate sent a letter by email in December 2006 to Eick, stating

that she could not sign the proposed petition for final distribution of Frances's estate regarding GPDR "as we do not have any credible evidence that the stock was held in Joint Tenancy."

Substantial evidence supports the trial court's denial of Amelia's petition for redress.

IV. The award of attorney fees was proper.

Amelia appealed from the award of attorney fees, arguing that the trial court lacked the statutory authority to award fees, her petition for redress was not unreasonable, the court did not have the equitable power to award fees, and the court erred in finding that Amelia brought her petition for redress in bad faith.

The trial court awarded attorney fees pursuant to section 9354, which provides in subdivision (a) that a creditor's claim may be commenced in the county where the proceeding administering the estate is pending, and provides in subdivision (c): "The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees." Amelia claims the statute limits the court to a fee award in a prevailing party on a creditor's claim, and so the court had no authority to award fees under section 9354 regarding Amelia's petition for redress.

In its statement of decision awarding fees, the trial court concluded that section 9354, subdivision (c) applied to Amelia's action because the petition for redress was based on the same claim (and the same alleged facts) as her creditor's claim. The main contention in the creditor's claim was that Edward agreed on March 26, 2004 not to revoke his 2003 will, that he breached that agreement (and in so doing breached his fiduciary duty to Amelia), and that as a result of the breach Amelia was deprived of her rightful portion of the estate. Those contentions were rejected, and shortly thereafter Amelia filed her petition for redress, naming as respondents (among others) Margaret and Susan as co-executors of Edward's estate and Norman H. Green as administrator. Amelia's second amended petition reiterates the contentions in the rejected creditor's

claim that Edward agreed on March 26, 2004 not to revoke his 2003 will, attaches a copy of her creditor's claim, and states, "On or about September 9, 2009, Amelia received notice that her Creditor's Claim was allowed in part and rejected in part. To date, no part of the Creditor's Claim has been paid by the decedent, the personal representatives, or any other person, and in an abundance of caution, Petitioner is electing to treat the entire claim as rejected." Further, in her opposition to a petition for an order that Amelia's petition for redress had violated Edward's will's no contest clause, Amelia equated her creditor's claim and the petition for redress, and argued that the will's no contest clause did not apply to the petition for redress because such a clause "need[ed] to include express reference to certain actions, e.g., creditor's claims, to be enforceable against such actions," and Edward's will failed to do so.

There is no right to appeal a rejected creditor's claim, and "[w]here, as here, there has been a partial rejection of the claim, the only recourse of the dissatisfied creditor is a suit." (McDonald v. Structured Asset Sales, LLC (2007) 154 Cal.App.4th 1068, 1072–1073, 1074.) Section 9353, subdivision (a), provides that "a claim rejected in whole or in part is barred as to the part rejected unless . . . the creditor commences a[] [timely] action on the claim" Amelia avoided this bar and acted on her rejected creditor's claim by filing her timely petition for redress under section 850, which allowed her to file the petition requesting an order as an interested party. She repeated the allegations in her creditor's claim and attached the claim. The trial court was correct to apply section 9354 to award fees to the prevailing parties in Amelia's timely action on her rejected creditor's claim.

Amelia argues that only the claimant or personal representative of the estate can recover attorney fees under section 9354, subdivision (c). Subdivision (c) uses the term "prevailing party" three times, in contrast to subdivision (b) regarding notice, which uses "personal representative" three times in providing that the personal representative must receive a copy of the notice of pendency of the action and is not liable on account of prior distribution or payment. Section 1000 provides that general rules of civil practice apply in probate cases unless the code provides otherwise. Here the Probate Code uses

“prevailing party” to designate who can be awarded attorney fees, and the trial court was correct to use the general understanding of that term to include each party who was required to defend the petition, given its finding that “respondents prevailed on all substantive issues.” (See Code Civ. Proc., § 1032, subd. (a)(4).)

Amelia argues that her petition for redress was “objectively reasonable” and the trial court erred in determining that it was unreasonable under section 9354 subdivision (c). The trial court applied the standard in Code of Civil Procedure section 1038, under which the court must determine whether the plaintiff brought the action with objective reasonable cause, i.e., whether a reasonable attorney would have thought the claim tenable. (See *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 862; *Carroll v. State of California* (1990) 217 Cal.App.3d 134, 141.) Amelia agrees with this standard.

The trial court found the claim was unreasonable because Amelia was aware before filing the petition that the March 26, 2004 document was not a binding contract, as she had acknowledged in her December 2004 declaration by stating that the document was not legally binding. Given that sworn statement, no reasonable attorney would have thought that it was a tenable claim to assert that she believed the opposite. Further, the plain language in the March 26, 2004 document stated only, “I [Edward] am not revoking [the 2003 will] and the distribution to my children remain as written,” which no reasonable attorney would have thought could be interpreted to mean that Edward would *never* revoke his 2003 will or change the distribution. Nothing in the December 28, 2004 document is a promise not to revoke the 2003 will in the future. We agree with the trial court that no reasonable attorney would believe Amelia had a tenable claim that Edward made a binding agreement never to revoke his will and later breached that binding agreement. The petition was objectively unreasonable.

As the trial court had the statutory power to award attorney fees under section 9354 and properly found that the petition was objectively unreasonable, we need not

address whether the court had the equitable power to award fees in the absence of statutory authorization, or whether Amelia brought the petition in bad faith.⁴

DISPOSITION

The judgment and order are affirmed. Costs are awarded to Margaret Eng, Susan Madjar, Michael Eng, Jeffrey Eng, Taylor Unger, Jonathan Lum, Jr., Zhong Pei Wu and Norman H. Green.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.

⁴ We deny the respondents' request for judicial notice related to the appeal of the attorney fees award.